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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,297	06/18/2001	James W. Ellis	DC01 (13202.00305) 410556	6874
27160	7590	11/05/2003		
PATENT ADMINISTRATOR KATTEN MUCHIN ZAVIS ROSENMAN 525 WEST MONROE STREET SUITE 1600 CHICAGO, IL 60661-3693			EXAMINER GABOR, OTILIA	
			ART UNIT 2878	PAPER NUMBER

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/882,297	ELLIS ET AL
	Examiner Otilia Gabor	Art Unit 2878

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 August 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,11,13-22,31 and 33-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1,11,13-22,31,33 and 34 is/are allowed.
- 6) Claim(s) 35-39 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 19 October 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>8/03</u> | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The amendments filed 08/20/2003 have been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 35, 36 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schmitt (U. S. Patent 4290695).

Schmitt discloses a method and apparatus for measuring the transmittance of radiation in water, the system comprising:

- a module 28 including a source of radiation 31
- a module 66 including two radiation sensors; radiation sensor 68 detecting radiation having intensity I_{D1} and a second detector detecting radiation having intensity I_{sD1} (see Fig. 7)

whereby the radiation detectors, as clearly shown in Fig. 7, are positioned at different distances from the radiation source 31 and both radiation detectors are capable of detecting radiation coming from the source 31.

The system including the source and detector module when submersed in water can be used to calculate the transmittance of radiation through the water.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitt and further in view of Richardson et al. (U. S. Patent 5242602).

Schmitt fails to disclose that the system is used in a fluid/water treatment/purification system, however according to Richardson a similar system is used for water purification and as such using the device of Schmitt in a water purification system constitutes only a matter of design choice.

Allowable Subject Matter

7. Claims 1, 11, 13-22, 31, 33, 34 are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter: The amendments made by the Applicant to more clearly define the radiation field thickness, namely, that it is the distance between the boundary element and the radiation source, as well as to specify that both the source and the detector are stationary and thus the field thickness is changed by changing the distance between the radiation source and the boundary element, render the claims allowable over the prior art.

Response to Arguments

9. Applicant's arguments with respect to claims 35-39 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Otilia Gabor whose telephone number is 703-305-0384. The examiner can normally be reached on Monday-Friday between 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta can be reached on 703-308-4852. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

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